IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 12TH JANUARY 2007 / 22ND PAUSHA 1928

CRP.No. 1018 of 2006()

AGAINST THE ORDER DATED 02/11/2006 IN EP 99/2005 IN OS.80/2003 of MUNSIFF COURT, PUNALUR

.....

REVN. PETITIONER: JUDGMENT DEBTOR IN E.P/DEFENDANT IN SUIT:

S.JAYACHANDRAN, S/O.V.SUDHAKARAN,
PROPRIETOR, HIGH TECH FURNITURE MART,
RESIDING AT SHANTHI BHAVAN, THOLIKKODU,
PUNALUR VILLAGE, PATHANAPURAM TALUK.

BY ADV. SRI.K.JAYAKUMAR

RESPONDENT/: DECREE HOLDER IN E.P/PLAINTIFF IN SUIT:

AJITHAN, S/O.PRABHAKARAN,
REJI HOUSE, EDAYAM MURI, ARACKAI VILLAGE,
PATHANAPURAM TALUK.

BY //

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 12/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO.3616/06 IN CRP 1018/06

DISMISSED

12/1/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PA to Judge.

M.SASIDHARAN NAMBIAR,J.

C.R.P .NO.1018 OF 2006

Dated 12th January 2007

O R D E R

Petitioner is judgment debtor in O.S.80/03 on the file of Munsiff court, Punalur . Respondent is decree holder. Towards realisation of decree debt respondent filed E.P. 99/05. Execution is sought by arrest and detention. Petitioner contended that he has no means. Learned Munsiff on the evidence of decree holder as PW1 and judgment debtor as DW1 found that petitioner has sufficient means and he willfully defaulted payment of decree debt. Still learned Munsiff did not direct his arrest. Instead petitioner was directed to pay decree debt in ten equal monthly instalments. That order is challenged in this revision petition filed under Section 115 of Code of Civil Procedure.

2. Learned counsel appearing for petitioner was heard. Argument of learned counsel appearing for petitioner was that there is absolutely no evidence to prove that petitioner has sufficient means to pay

decree debt and therefore the order is unsustainable. It was argued that apart from the interested version of PW1 no evidence was adduced to prove that petitioner has any means much less sufficient means and therefore order is to be set aside.

3. On hearing learned counsel appearing for petitioner and going through the deposition of petitioner recorded by learned Munsiff, I do find that there is any illegality or irregularity in the impugned order passed by learned Munsiff. On appreciating evidence of RW1 it cannot be said that appreciation of evidence by learned Munsiff was perverse or not proper. Petitioner is a post graduate. Though petitioner subsequently modified the answer, it was admitted by him at the time of cross examination that he has a shop near to Punalur bus stand. Subsequently petitioner added that it is not his business but that of his wife. Such a contention was not taken in the objection filed before the court below. No material was produced to substantiate the said claim. True, petitioner has also stated that that business is not now with him. It is not explained what happened to the business, if the business was there. When the entire evidence is appreciated it cannot be said that the view taken by

learned Munsiff is not a possible or reasonable that could be taken on the evidence. It is clear that petitioner has sufficient means to pay the decree debt. In such circumstances, the findings do not warrant interference.

4. Learned Munsiff permitted petitioner to pay decree debt in ten equal monthly instalments. Learned counsel submitted that as petitioner has no means, he is not in a position to pay decree debt in ten monthly instalments and he be permitted to pay it in 20 instalments. Petitioner is permitted to pay balance decree debt in 15 monthly instalments.

Revision petition is disposed of.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.